



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/804,381

03/19/2004

Scott Edward Osborne

7892C

7237

27752 7590 12/21/2009  
THE PROCTER & GAMBLE COMPANY  
Global Legal Department - IP  
Sycamore Building - 4th Floor  
299 East Sixth Street  
CINCINNATI, OH 45202

EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT

PAPER NUMBER

1611

MAIL DATE

DELIVERY MODE

12/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* SCOTT EDWARD OSBORNE, GEORGE ENDEL DECKNER,  
THOMAS JAMES KLOFTA, and VICTOR NICHOLAS VEGA

---

Appeal 2008-003856  
Application 10/804,381  
Technology Center 1600

---

Decided: December 22, 2009

---

Before DONALD E. ADAMS, DEMETRA J. MILLS, and ERIC GRIMES,  
*Administrative Patent Judges.*

GRIMES, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of the decision entered Aug. 28, 2009 (“Decision”) on the basis that the Decision overlooked the arguments presented in the Reply Brief. The request for rehearing is denied. The arguments presented in the Reply Brief were considered, and replied to, even

though they were not expressly cited in the Decision. To clarify the record, however, they are expressly addressed below.

Appellants argued that Johansson's invention was "directed to the problems associated with allergic contact dermatitis caused by the contact of nickel to skin" (Reply Br. 2). Appellants argued that Johansson disclosed treating this type of allergic contact dermatitis using a "combination of a chitosan material and an anionic anti-allergenic substance, such as EDTA or DTPA," that can chelate metal ions (*id.*). Appellants concluded that "unless a composition contains an anionic anti-allergenic substance, Johansson et al. provides no reason for one skilled in the art to add chitosan material to a composition" (*id.*). Similarly, Appellants argued that Roe did not disclose a composition containing an anionic anti-allergenic substance and, therefore, a skilled worker would have had no reason to add Johansson's chitosan material to Roe's composition (Reply Br. 3).

This argument was responded to in the Decision's Findings of Fact (FFs) 18-21, 24, and 26, and the discussion on page 9. Specifically, Johansson disclosed that its composition contained a cationic hydrophilic polymer, preferably chitosan (FF 21), bound to an anionic scavenger substance (FF 19). We concluded that it would have been obvious to include Johansson's "chitosan-containing skin care active" (Decision 9) in Roe's lotion. Johansson's "chitosan-containing skin care active" is the cationic polymer (chitosan) "and an anionic scavenger substance, bound together by either ionic or covalent bonds" (FF 19). Thus, the fact that Roe's lotion does not contain an anionic scavenger substance is immaterial to the basis for combining the teachings of the references.

Appellants also argued that Roe is addressed to “problems associated with the adherence of bowel movements to skin” and “[o]ne skilled in the art would not expect allergic contact dermatitis to be caused by nickel in the areas of the body to which the invention of Roe et al. is directed, e.g., the genital or gluteal areas” (Reply Br. 2). Appellants concluded that, therefore, a skilled worker would not look to Johansson to address the problem to which Roe is directed (*id.*).

This argument was responded to in the Decision’s FFs 18, 24, and 26, and the discussion on pages 9-10. Specifically, Johansson disclosed that its composition was useful not only for preventing contact dermatitis but also as “a protective and/or therapeutic antiviral, antifungal and/or antiinflammatory formulation for the treatment of dermatological disorders” (FF 18), “such as herpes infections” (FF 24). Johansson also disclosed that its composition “is preferably administered dermally . . . or in the mucous membrane-anal region and the vulvo-vaginal region” (FF 26).

We concluded that it would have been obvious to include Johansson’s chitosan-containing skin active in Roe’s lotion to prevent contact with allergens *or to prevent or treat viral infections*, such as the herpes virus infections specifically disclosed by Johansson (Decision 9-10). In addition, Johansson expressly suggests application of its composition to the areas of the body to which Roe’s invention is directed.

Appeal 2008-003856  
Application 10/804,381

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

REHEARING DENIED

lp

THE PROCTER & GAMBLE COMPANY  
GLOBAL LEGAL DEPARTMENT - IP  
SYCAMORE BUILDING - 4TH FLOOR  
299 EAST SIXTH STREET  
CINCINNATI OH 45202